

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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VIRGIN VALLEY WATER DISTRICT,

Plaintiff,

v.

VANGUARD PIPING SYSTEMS  
(CANADA), INC.; et al.,

Defendants.

2:09-cv-00309-LRH-PAL

ORDER

Before the court is defendants VG Pipe, LLC; Viega, LLC; and Viega NA, Inc.’s (collectively “defendants”) motion to strike various expert reports and expert witness opinions. Doc. #134.<sup>1</sup> Plaintiff Virgin Valley Water District (“Virgin Valley”) filed an opposition (Doc. #154) to which defendants replied (Doc. #159).

**I. Facts and Background**

Virgin Valley is a political subdivision of the State of Nevada and is responsible for the care and maintenance of underground residential water service lines in and around Mesquite, Nevada. This action arises out of Virgin Valley’s allegations that the high-density piping and tubing used in the construction of underground water service lines was defectively designed and/or manufactured by defendants.

As part of discovery in this matter, plaintiff Virgin Valley retained various experts to

<sup>1</sup> Refers to the court’s docket entry number.

1 provide written reports and opinions for use at trial including Leslie Henley (“Henley”), paving  
2 expert; Peter Badala (“Badala”), damage contention expert; Dr. Robert Clark (“Dr. Clark”),  
3 polyethylene pipe expert; and Dr. Brian Martin (“Martin”), future damages expert. Defendants now  
4 ask the court to strike or exclude these experts’ reports. Doc. #134.

## 5 **II. Discussion**

6 The instant motion, although titled a motion to strike, is essentially a motion in limine to  
7 exclude evidence from trial, namely various expert reports and opinions, and the court shall  
8 consider it as such.

9 In their motion, defendants argue that the various experts’ reports and opinions are  
10 unreliable and should be excluded under Federal Rule of Evidence 702 and in accordance with the  
11 *Daubert* evidence trilogy: *Daubert v. Merrell-Dow Pharms., Inc.*, 509 U.S. 579 (1993); *General*  
12 *Electric Co. v. Joiner*, 522 U.S. 136 (1998); and *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137  
13 (1999). Federal Rule of Evidence 702 permits testimony on “scientific, technical, or other  
14 specialized knowledge” by experts qualified by “knowledge, skill, experience, training, or  
15 education” if the testimony is both relevant and reliable. FED. R. EVID. 702. Expert testimony is  
16 reliable if it is “based upon sufficient facts or data,” “the product of reliable principles and  
17 methods,” and the expert “applies the principles and methods reliably to the facts of the case.” *Id.*

18 Here, defendants do not dispute the experts’ qualifications or experience. Rather,  
19 defendants challenge the reliability of the experts’ opinions arguing that their reports and opinions  
20 are not “based upon sufficient facts or data” to be reliable under the federal rules. *See Daubert*, 509  
21 U.S. 579; FED. R. EVID. 702. Specifically, defendants argue that expert Henley’s report contains  
22 damage computations which are not supported by the facts; expert Badala’s past damages  
23 computation includes payment for items that should not be included; expert Dr. Clark’s report is  
24 based on a section of pipe which was not used by defendants’ own pipe expert; and expert Dr.  
25 Martin’s report used disputed lateral installations in his calculations and future damage  
26

1 computations. Therefore, defendants contend that Virgin Valley's experts' reports should be  
2 stricken from the record.

3 Initially, the court finds that the present motions in limine are premature. Generally, a  
4 motion in limine should not be adjudicated until the eve of trial, after a pre-trial order has been  
5 filed, and the parties have identified their expert witnesses. *See Jones v. Harris*, 665 F. Supp. 2d  
6 394 (S.D. NY 2009). Here, the parties have not yet filed a pre-trial order or identified which of  
7 their retained experts will testify at trial.

8 Additionally, the court finds that defendants are in essence challenging the ultimate  
9 conclusions of Virgin Valley's experts. For example, defendants argue that expert Badala's report  
10 is improper because he includes costs of machinery and manpower other than those directly used to  
11 repair pipe leaks which are contested by defendants' retained experts. Moreover, defendants argue  
12 that expert Henley's report is unreliable because defendants experts argue that there is no local  
13 ordinance of state statute which allows Virgin Valley to seek re-paving expenses. A court should  
14 not strike expert testimony under *Daubert* simply because the parties dispute the expert's ultimate  
15 conclusions. *See Daubert*, 509 U.S. at 594-595 ("The inquiry envisioned by Rule 702 is . . . the  
16 scientific validity and thus evidentiary relevance and reliability of the principles that underlie a  
17 proposed submission. The focus, of course, must be solely on principles and methodology, not on  
18 the conclusions that they generate.").

19 Furthermore, defendants arguments involve factual disputes between the parties, including  
20 the proper calculation of past and future damages, which go to the weight that should be afforded  
21 to the expert reports by the jury and not the admissibility of the evidence at trial. "Vigorous cross-  
22 examination, presentation of contrary evidence, and careful instruction on the burden of proof are  
23 the traditional and appropriate means of attacking shaky but admissible evidence." *Daubert*, 509  
24 U.S. at 596. Accordingly, the court shall deny defendants' motion.

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1 IT IS THEREFORE ORDERED that defendants' motion to strike (Doc. #134) is DENIED.

2 IT IS SO ORDERED.

3 DATED this 12th day of January, 2011.

A handwritten signature in blue ink, appearing to read "L. Hicks", is positioned above the printed name of the judge.

5  
6 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE